THE JUDICIAL ANNULMENT OF LEGACY

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Abstract

When the inheritance is being opened, the legatee is entitled to accept or give up the legacy. Should he choose to accept the legacy, the legatee is obliged to fulfil the obligation established by the testator. According to the provisions of the first paragraph of Article 1069 of the Civil Code, first thesis, someone can request the annulment of the legacy in case the legatee has "unreasonably" failed to fulfil the obligation, meaning the guilt of the legatee must be established. According to the legal literature, the failure of the general devisee to pay a particular legacy is also considered to be a failure to fulfil his obligation. The right to request the annulment of a legacy for failure to fulfil the obligation established by the testator shall be prescribed (shall become invalidated) within a year from the date the obligation must be fulfilled.

Keywords: *legacy, annulment, inheritance, testator, Civil Code, obligation, creditors, ingratitude.*

I. Introduction

A legacy shall be annulled in case the legatee deliberately takes one or more of the legally valid actions against the testator or his/her memory[1]. The actions that lead to the legacy being annulled can be performed either before or after the inheritance has been opened, though the annulment can only be enforced after the death of the testator, at the request of the interested persons (legal heirs, general devisees etc.).

II. Causes leading to the annulment of legacy

A legacy shall be annulled on legal grounds:

- failure to fulfil the obligation established by the testator;- the ingratitude of the legatee.

2.1. The failure to fulfil the obligation established by the testator. Within the meaning of the first paragraph of Article 1069 of the Civil Code, first thesis, "an individual may request that the legacy should be annulled in case the legatee unreasonably fails to fulfil the obligation established by the testator".

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[1] See F. Deak, *Tratat de drept succesoral, Ediția a II-a actualizată și completată [Treaty of Succession Law, 2nd Edition updated and completed]*, Universul Juridic Publishing House, Bucuresti [Bucharest], 2002, p. 249;

When the inheritance is being opened, the legatee is entitled to accept or give up the legacy. Should he choose to accept the legacy, the legatee is obliged to fulfil the obligation established by the testator. Still, as specified in the legal literature, the obligation is only mandatory for the legatee who has already accepted the legacy at the date the inheritance has been opened[2], as legacy shall only generate effects after that date.

According to the provisions of the first paragraph of Article 1069 of the Civil Code, first thesis, someone can request the annulment of the legacy in case the legatee has "unreasonably" failed to fulfil the obligation, meaning the guilt of the legatee must be established[3]. Consequently, the annulment of a legacy for failure to fulfil an obligation is a *civil sanction.*

The failure to fulfil the obligation established by the testator could be *total* or *partial*, whereas its fulfilment could be *inadequate*. However, a legacy cannot be merely annulled in case the legatee fails to fulfil his obligation; it can only be annulled by Court decision, the Court being entitled to assess to what extent or to what degree the obligation has not been fulfilled and, if applicable, the Court shall order the annulment or shall grant a grace period for the fulfilment of the obligation[4].

According to the legal literature, the failure of the general devisee to pay a particular legacy is also considered to be a failure to fulfil his obligation[5].

Still, this is not an obligation in the real sense and consequently the failure of the legatee to fulfil it does not generate the annulment of the legacy; it is a possible *precatory* provision, a recommendation or a wish of the testator for the legatee[6].

We have now learnt that the annulment of a legacy is determined by the fault of the legatee.

Nevertheless, within the meaning of the first paragraph of Article 1069 of the Civil Code, first thesis "the accidental failure to fulfil the obligation in question can only generate the annulment of the legacy if the testator expressly specified that the validity of the legacy is closely dependant on the fulfilment of the obligation".

"The accidental failure to fulfil the obligation" means the failure to fulfil it because of the force majeure or in case of an unexpected or uncontrollable event above the legatee.

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[2] See D. Chirică, *Drept civil. Succesiuni şi testamente [Civil Law. Successions and wills],* Editura Rosetti, Bucureşti [Rosetti Publishing House, Bucharest], 2003, p. 248.

[3] Ibidem page 249; See Dumitru C.Florescu, *Dreptul succesoral în Noul Cod civil, Ediția a II-a revăzută și adăugită [Succession Law in the new Civil Code, 2nd edition revised and completed,* Editura Universul Juridic, Bucureşti *[*Universul Juridic Publishing House, Bucharest] , 2012, p. 108; G. Boroi, L. Stănciulescu, *Instituții de drept civil în reglementarea noului Cod civil [Civil law institutions in regulating the new Civil Code,* Hamangiu Publising House, Bucharest], Editura Hamangiu, Bucureşti, 2012, p. 594.

[4] See D. Chirică, *op. cit.,* p. 249.

[5] See M. Eliescu (I) *Moştenirea şi devoluțiunea ei în dreptul RSR,* Editura Academiei, Bucureşti *[Inheritance and its transmission in the SRR,* Academy Publishing House, Bucharest], 1966, p. 269.

[6] See M. Mureşan, I. Urs, *Drept civil. Succesiuni. Curs universitar,* Editura Cordial Lex, Cluj-Napoca [*Civil Law. Successions. Academic course,* Cordial Lex Publishing House, Cluj-Napoca], 2006, p. 69; The Supreme Court gave a sentence in this sense - no. 1229 of December 10 1959, in C.D., 1959, pp. 193-195.

According to the literature in the field[7], the legacy loses its validity in such a case, as well, but it is not adequate to use the term "annulment" which means the cancellation by Court decision of the legacy for reasons attributable to the legatee. We should instead use either the term *lapse of time* (the reason for the legacy ending, because an agreed time limit has passed), or *cancellation because of the occurrence of a tacit resolutive condition* – the non-fulfilment of the obligation – in such a case, the Court cannot annul the legacy, it can only determine the ineffectiveness of the legacy.

Thus, according to the first paragraph of Article 1069 of the Civil Code, second thesis, the effectiveness of the legacy depends on the fulfilment of the obligation, which is why it is our opinion that the accidental failure to fulfil the obligation means the completion of a *tacit resolutive condition*[8].

A legacy can be annulled for failure to fulfil an obligation at the request of the persons who would benefit thereof: legal heirs, general devisees, the particular legatee provided he can justify his request (for example, he has the obligation to fulfil the obligation or the particular legacy is conjunctive), the creditors of the above mentioned persons, by means of a derivative action.

In case the obligation of the legatee was meant to favour a third party, the latter shall not be entitled to ask the Court to annul the legacy (for lack of legitimate interest); it can only ask the Court to order the forced fulfilment of the obligation (except when the beneficiary of the obligation is simultaneously the successor of the testator).

The right to request the annulment of a legacy for failure to fulfil the obligation established by the testator *shall be prescribed* (shall become invalidated) *within a year* from the date the obligation must be fulfilled (Article 1070 of the Civil Code). Supposing the beneficiaries of the right to request the annulment of the legacy had no idea of the existence of an obligation, based on the literature previous to the new Civil Code, the prescription time becomes applicable when the plaintiff was informed on the non-fulfilment of the obligation[9]. In our opinion, the prescription becomes effective by the date the obligation needed to be fulfilled - the existence of a prescription deadline – whereas the heir unfamiliar with the existence of an obligation shall be entitled to submit an application to extend the time limit, according to the provisions of Article 2522 of the Civil Code.

2.2. The ingratitude of the legatee. Within the meaning of the second paragraph of Article 1069 of the Civil Code, the annulment of a legacy is also applicable because of the ingratitude of the legatee, in one of the following cases:

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[7] See D. Chirică, *op. cit.,* p. 250;

[8] See F. Deak, *op. cit.,* p. 253; according to the literature, in this case, the free will does not last if the obligation is not fulfilled, which is why the obligation is the impulsive and determinant cause of the free will (see *Noul Cod civil. Comentariu pe articole* (coordonatori Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei), Editura C.H.Beck, București [*The new Civil Code. Comments of articles* (coordinators Fl. A. Baias, E. Chelaru, R. Constantinovici, I. Macovei), C. H. Beck Publishing House, Bucharest], 2012, p. 1104.

[9] See F. Deak, *op. cit.,* p. 252.

a) if the legatee has attempted to take the life of the testator or of a person close to him or, knowing that others are about to do so, has failed to inform the testator thereof; in order to construe this piece of legislation, we need to make some specifications:

- "the attempt to take the life of the testator" means (just like in the annulment of a donation on ingratitude grounds or in the no dignity cases) the intentional attempt of the legatee to kill the testator; this case is more serious than the no dignity case provided for under Article 958 (1) (a) of the Civil Code.[10] It is true. This case covers both the actions included in the category of criminality (for example, murder, attempted murder etc.) and the actions falling out of the category of criminality, but resulting in the death of the testator or endangering the life of the testator (for example, the legatee took the testator on a dangerous route, thus endangering his life);
- it is not necessary for the testator to have died after the attempted murder, nor for the legatee to have been convicted/sentenced; as in the annulment of the donation on ingratitude grounds, it is enough if the Court determines the intentional offence provided for by law;
- it is not necessary for the legatee to have known he is entitled to the will;
- at the same time, the attempt to murder a person close to the testator is an ingratitude case much more comprehensive than the no dignity case provided for by Article 958 (1) (b) of the Civil Code; for example, that person must not necessarily be a possible heir; the person can be a close, trustworthy friend.

b) should the legatee be guilty of serious offence, cruelty or injury towards the testator or should he seriously injury the memory of the testator:

- an *offence* means a crime, an act provided for and punished by law; any criminal act committed by the legatee, except for those specified above, whereas the testator is considered to be the aggrieved party (for example, theft, robbery, beating up, physical harm, abandon in need etc);
- *cruelty* means an act ferociously, violently and brutally committed by the legatee towards the testator; for example, physically or psychically abusive acts (they are also crimes; beating-up, physical harm, abandon in need etc); further acts falling out of the category of crimes could also result in ingratitude (the testator is mistreated[11], preventing him from having a relationship with his child(ren), harming his feelings etc.[12].);
- *serious injury towards the testator* means insults, serious offensive remarks, mockery which the legatee commits verbally, physically or via other insulting ways, intended to harm the dignity and injurious to the testator's reputation; some of these acts can also be crimes (for example, insults, slander etc), while others are not (for example, the infidelity of the husband is considered to be a serious injury[13]);

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[10] See C. Macovei, M. C. Dobrilă, *Noul Cod civil. Comentariu pe articole* (coordonatori Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei), C.H.Beck, Bucureşti [*The new Civil Code. Comments of articles* (coordinators Fl. A. Baias, E. Chelaru, R. Constantinovici, I. Macovei), C.H. Beck Publishing House, Bucharest], 2012, p. 1104.

[11] See G. Boroi, L. Stănciulescu, *op. cit.,* p. 594

[12] See D. Chirică, *op. cit.,* p. 251.

[13] See G. Boroi, L. Stănciulescu, *op. cit.,* p. 594.

- *serious injury to the testator's memory* – injurious acts (words, gestures or other insulting acts) of the legatee which could harm the dignity and reputation of the testator[14];

In all the above cases, the Court is competent to assess if the acts committed by the legatee are crimes, acts of cruelty or serious injury. See a) the ingratitude cases— the acts had to be intentional; it is not necessary for the legatee to have known he is entitled to the will and it is not necessary for the legatee to have been convicted/sentenced;

Being acts intentionally committed (fault), the annulment of a legacy on ingratitude grounds is a *civil sanction,* sanctioning the ungrateful (fault) behaviour of the legatee towards the testator[15].

You can see that some acts of the legatee, leading tot the annulment of the legacy on ingratitude grounds, may have been committed while the testator was still alive (for example, attempted murder, crimes, cruelty or serious injuries), whereas other acts may have been committed after his death (serious injury to the testator's memory).

There are a number of acts leading to the annulment of the legacy on both ingratitude and no dignity grounds. For instance, attempted murder towards the testator or a person close to him; serious physical or moral violence (cruelty) directed to the testator.

Nevertheless, unlike the no dignity cases (the effects of no dignity can be eliminated by the person who makes the will), the legislator has not regulated the possibility of the legatee being forgiven (elimination of the ingratitude) for the acts he committed during the life of the testator. Consequently, the following question is legitimate: can the testator forgive or not the legatee?

As shown in the legal literature previous to the new Civil Code, considering the ingratitude was committed during the life of the testator, he (the testator solely) can annul the legacy until the last day of his life, no matter how much time has passed since that moment and without the involvement of the Court[16]. Even if the deceased eliminated the effects of no dignity, under the provisions of the first paragraph of Article 961 of the Civil Code, he is entitled to annul the legacy later on, until the day he dies.

On the other hand, provided that the testator, who had the possibility to annul the legacy, failed to do so (it was his choice) and expressed his will to forgive the legatee, that legacy can no longer be annulled after the death of the testator, at the request of the persons interested[17].

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[14] Ibidem p. 1105.

[15] See D. Chirică, *op. cit.,* p. 251.

[16] See F. Deak, *op. cit.,* p. 255.

[17] In the legal literature – the one-year prescription time (to apply for the annulment of the legacy) is unitary and is calculated since the date the heir was informed on the ingratitude act; under the circumstances, it cannot be implied that the legatee can still be forgiven by the testator, when the ingratitude was committed during his life (see Dumitru C. Florescu, *op. cit.,* p. 110).
It has also been claimed that the annulment of the legacy is no longer applicable in case the unworthy person has already been legally forgiven by the deceased, being rewarded by the latter in his will (see I. Genoiu, *Dreptul la moştenire în Noul Cod civil,* Editura C.H.Beck, Bucureşti, 2012 [*The Right to inherit*

The right to request the annulment of the legacy by the Court *shall be prescribed within a year* since the heir was informed on the ingratitude (Article 1070 of the Civil Code.).

The one-year time is a prescription being subject to interruption, suspension and extension, under the law.

Should the heir find out about the ingratitude of the legatee before the death of the testator, the prescription can only become effective from the date the inheritance has been opened, as legally, a legacy can only be annulled on ingratitude grounds starting this date.

Persons entitled to request the annulment of the legacy: legal heirs of the testator, legatees obliged to pay a legacy, co-legatees who are beneficiaries of a conjunctive legacy, testamentary executors entitled to fulfil the last wish of the deceased. The creditors of those mentioned above are not entitled request the annulment by means of a derivative action, due to the exclusively moral or personal nature of this action[18]. The person against whom this action is exercised is the legatee who committed an act of ingratitude, and not his heirs.

in the new Civil Code, C. H. Beck Publishing House, Bucharest, 2012], p. 216). In our opinion, in case the unworthy person has been forgiven by the testator under the provisions of the first paragraph of Article 961 of the Civil Code, he is no longer dismissed from the inheritance, be it legal or testamentary, unless later on, until the death of the testator, the legatee commits other ingratitude acts or the testator annuls the legacy. As the testator has already forgiven the legatee, there is no reason why he should be dismissed from the testamentary inheritance. Consequently, in such situations, we believe the Court can no longer annul the legacy at the request of the interested persons, as the testator has already forgiven the legatee. On the other hand, if the unworthy person has been forgiven under the provisions of the first paragraph of Article 961 of the Civil Code, the testator can annul the legacy until his death in the future, at all times; if he had the chance but did not want to annul it, it is our opinion the legacy can no longer be annulled by the Court on ingratitude grounds; things are different if he had no chance to annul it – the interested person can in this situation request the annulment of the legacy by the Court.

[18] See D. Chirică, *op. cit.,* p. 252.